



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

08/987,468 12/10/97 GERS-BARLAG

H BEIERSDORF

KURT G. BRISCOE, ESQ.
NORRIS, MCLAUGHLIN & MARCUS, P.A.
660 WHITE PLAINS ROAD
TARRYTOWN NY 10591-5144

HM22/0614

EXAMINER

LAMM, M

ART UNIT	PAPER NUMBER
----------	--------------

1616

17

DATE MAILED:

06/14/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/987,468

Applicant(s)

Gers-Barlag et al.

Examiner

Marina Lamm

Group Art Unit

1616

☒ Responsive to communication(s) filed on May 8, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 12-26 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 12-26 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1616

DETAILED ACTION

Continued Prosecution Application

1. The request filed on 05/08/2000 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/987,468 is acceptable and a CPA has been established. An action on the CPA follows.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 12-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gers-Barlag et al. (US 5,725,844) in view of Grollier et al. (US 5,427,771).

Gers-Barlag et al. teach a cosmetic composition in the form of O/W emulsion comprising one or more cosmetically acceptable oil- or water-soluble organic UV filter substances, including salts of 2-phenylbenzimidazole-5-sulphonic acid, sulphonic acid derivatives of benzophenones, sulphonic acid derivatives of 3-benzylidenecamphor (col. 7, lines 55-65); one or more cosmetically acceptable hydrophobic inorganic pigments, these pigments being incorporated into the oily phase of the emulsion (col. 3, lines 48-50; col. 5, lines 9-45), emulsifiers, including glyceryl stearate and glyceryl

Art Unit: 1616

lanolate (Examples 1-4); and other cosmetically acceptable compounds. Gers-Barlag et al. also teach a method for achieving or increasing the water resistance of sunscreen formulations by incorporating the hydrophobic inorganic pigments into the oily phase of the emulsion. See col.4, lines 16-26.

Gers-Barlag et al. does not teach polyglyceryl emulsifiers as claimed in the instant claims.

However, Grollier et al. teach using mono- and diesters of fatty acids (C12-C18) and glycerol or polyglycerol (col. 5, lines 27-39) as emulsifiers in sunscreen cosmetic composition.

Both references are analogous art because they are from the same field of endeavor, which is sunscreen compositions. Polyglyceryl and monoglyceryl surface active agents are used in both references for the same art recognized purpose.

Therefore, an ordinary practitioner would have a reasonable expectation of success using either polyglyceryl or monoglyceryl emulsifiers for sunscreen cosmetic compositions in the absence of clear showing of any unexpected results attributable to the applicant's specific selection of polyglyceryl compounds.

Thus, the claimed invention as a whole was clearly *prima facie* obvious.

Conclusion

4. This is a CPA of applicant's earlier Application No. 08/987,468. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application.

Art Unit: 1616

Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541. The examiner can normally be reached on Monday to Friday from 9 to 5.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Application/Control Number: 08/987,468

Page 5

Art Unit: 1616

ml
June 12, 2000



Shelley A. Dodson
Primary Examiner
Art Unit 1616